

HOUSE BILL 144

By McCormick

AN ACT to amend Tennessee Code Annotated, Title 56,
Chapter 14, relative to Surplus Lines Insurance.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 14, Section 113, is amended by deleting that section in its entirety and replacing it with the following:

56-14-113. Premiums subject to a gross premium tax -- Amount.

(a) The premiums charged for surplus lines insurance are subject to a gross premium tax in an amount to be determined by subsection (b).

(b)

(1) In addition to the full amount of gross premiums charged by the insurer for the insurance, every person licensed pursuant to § 56-14-104 shall collect and pay to the commissioner a sum based the total gross premiums charged, less any return premiums, for surplus lines insurance provided by the surplus lines agent pursuant to the license. Where the insurance covers an insured whose home state is this state, the sum payable shall be computed based on an amount equal to five percent (5%) on the gross premiums, less the amount of gross premiums allocated to this state and returned to the insured.

(2) The tax on any portion of the premium unearned at termination of insurance having been credited by the state to the surplus lines agent shall be returned to the policyholder directly by the surplus lines agent or through the producing broker, if any.

(3) The surplus lines agent is prohibited from rebating, for any reason, any part of the tax.

(4) The commissioner is authorized to contract or compact with other states for the purpose of collecting and disbursing to reciprocal states, defined as those participating in such contract or compact, any funds collected pursuant to subsection (a) that are applicable to other properties, risks, or exposures located or to be performed outside of this state. To the extent that other states where portions of the properties, risks, or exposures reside have failed to enter into compact or reciprocal allocation procedure with this state, the net premium tax collected shall be retained by this state.

(5) On March 1 of each year, at the time of filing the report as set forth in § 56-14-106, each surplus lines licensee shall pay the premium tax due for the policies written during the period covered by the report.

(6) For the purposes of this section, "premium" includes all premiums, membership fees, assessments, dues, or any other consideration for insurance collected under this section.

(7) The tax collected under this section shall be in lieu of all other insurance taxes.

(8) The surplus lines agent shall collect from the insured the amount of the tax at the time of delivery of the cover note, certificate of insurance, policy, or other initial confirmation of insurance, in addition to the full amount of the gross premium charged by the insurer for the insurance. No agent shall absorb the tax nor shall any agent, as an inducement for insurance or for any other reason, rebate all or any part of the tax or the agent's commission.

(c) All surplus lines premium taxes collected by a surplus lines agent under this section are trust funds in the agent's hands and the property of this state. The funds shall be maintained by the surplus lines agent in a separate account and shall not be mingled with any other funds, either business or private. Any surplus lines agent who fails or refuses to pay over to the state the surplus lines premium tax at the time required

in this section, or who fraudulently withholds or appropriates or otherwise uses the money or any portions of the money belonging to the state, commits theft and shall be punished as provided by law for the crime of theft, regardless of whether the surplus lines agent has or claims to have any interest in the money so received.

(d)

(1) Any surplus lines agent failing and neglecting to make returns and payments promptly and correctly as provided by subdivision (b)(5) shall forfeit and pay to the state, in addition to the amount of these taxes, an amount equal to five percent (5%) for the first month or fractional part of the first month of delinquency; provided, that should the period of delinquency exceed one (1) month, the rate of penalty will be an additional five percent (5%) for the second month or fractional part of the second month and penalty thereafter at the rate of one half of one percent (0.5%) per month of the amount of tax due, the maximum penalty not to exceed ten thousand dollars (\$10,000) for any surplus lines agent not more than three (3) days delinquent. All delinquencies shall bear interest at the rate of ten percent (10%) per annum from the date the amount was due until paid. The penalty and interest shall apply to any part of the tax unpaid by the due date and no penalty or interest may be waived.

(2) The commissioner has the discretion, for good cause shown, upon application made in advance of the delinquency date, to grant an extension of time not to exceed sixty (60) days, to the surplus lines agent to file the premium tax returns and pay the tax imposed in this part, without penalty attached, but the tax shall bear interest as provided in subdivision (d)(1) from the date the amount was due.

(3) Any surplus lines agent failing to pay the tax due plus penalty and interest for sixty (60) days beyond the due date shall thereafter be debarred from transacting any business of insurance in the state until these taxes and penalties are fully paid, and the commissioner shall revoke the license of the surplus lines agent.

(4) The commissioner is authorized to promulgate rules that provide for a convenience fee to cover the cost of accepting electronic monthly affidavits, annual reports and tax payments. Any fee set by rule under the authority of this subdivision (d)(6) may be assessed in addition to any applicable penalty and interest. In no event shall the convenience fee exceed the actual costs incurred by the department in accepting electronic monthly affidavits, annual reports and tax payments.

(e) If the property of any surplus lines agent is seized upon any mesne or final process in any court in this state, or when the business of any surplus lines agent is suspended by the action of creditors or put into the hands of any assignee, receiver or trustee, all surplus lines premium tax money and penalties due the state from the surplus lines agent shall be considered preferred claims, and the state shall be a preferred creditor and shall be paid in full.

(f) The attorney general and reporter, upon request of the commissioner, shall proceed in the courts of this or any other state or in any federal court or agency to recover the tax not paid within the time prescribed in this section.

SECTION 2. This bill shall become effective July 1, 2013, the public welfare requiring it.